



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

KAROL KABUT

APPLICANT

A N D :1

THE OWNERS, STRATA PLAN NW 1378

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Jeffrey Drozdiak

INTRODUCTION

1. This strata property dispute is about enforcing bylaws.
2. The applicant, Karol Kabut, co-owns strata lot 59 in the respondent strata corporation, The Owners, Strata Plan NW 1378 (strata). The strata has allowed another strata owner (the golf cart owner) to charge their golf cart using a common property

electrical outlet. Mr. Kabut says these actions are against the strata's bylaws. Despite his complaints, Mr. Kabut says the strata has refused to enforce these bylaws against the other owner. I infer Mr. Kabut argues that the strata's actions are significantly unfair. Mr. Kabut seeks an order for the strata to enforce its bylaws by preventing the other owner from charging the golf cart unless they install a bylaw-compliant charger.

3. The strata says there is no bylaw that prevents an owner from charging a golf cart using a common property electrical outlet. The strata also denies that charging a golf cart is a nuisance, a hazard, or interferes with the use and enjoyment of common property, as Mr. Kabut suggests. The strata asks for Mr. Kabut's claims to be dismissed.
4. Mr. Kabut is self-represented. The strata is represented by a strata council member.
5. For the reasons that follow, I dismiss Mr. Kabut's claims and this dispute.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. There are no significant credibility issues. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

9. The issues in this dispute are:
 - a. Was the strata's decision not to enforce its bylaws significantly unfair?
 - b. If so, what remedy is appropriate?

BACKGROUND

10. In a civil proceeding like this one, Mr. Kabut, as the applicant, must prove his claims on a balance of probabilities (meaning "more likely than not"). While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The strata was created in February 1979. The strata is a 75-acre complex with 132 residential strata lots in 25 buildings. The strata includes a public golf course.
12. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on December 1, 2022. The bylaw amendment confirms that the Standard Bylaws under the *Strata Property Act* (SPA) do not apply. These bylaws were the applicable bylaws when this dispute began.
13. In its submissions, the strata says it passed a further bylaw amendment at its October 24, 2023 AGM, which is relevant to this dispute. In his reply submissions, Mr. Kabut argues there is no evidence that the bylaw amendment was filed with the LTO. I infer Mr. Kabut is arguing that there is no evidence the strata has complied with SPA section 128(2). This section says a bylaw amendment does not take effect until filed with the LTO. I asked CRT staff to run an updated LTO search and I confirmed that the bylaw amendment was filed with the LTO on December 19, 2023.

14. After completing my search, I did not request further submissions from the parties on the bylaw amendment for two reasons. First, the bylaw amendment is clearly worded and self-explanatory. Second, Mr. Kabut does not dispute that the bylaw amendment was passed at the October 24, 2023 AGM. Mr. Kabut only argues that there is no evidence that the bylaw amendment was filed with the LTO. Based on my recent LTO search, I am satisfied that the bylaw amendment was properly filed, and I find the changes are now in effect. I will discuss the relevant changes below.

EVIDENCE AND ANALYSIS

15. The following facts are undisputed.

16. In November 2019 and December 2020, the strata council received complaints about the golf cart owner parking their golf cart in a parking area. The strata sent a bylaw violation letter requiring the golf cart owner to rent a parking stall for the golf cart. The golf cart owner rented a parking stall.

17. In November 2022, Mr. Kabut complained to the strata council about the golf cart owner charging their golf cart from common property. Mr. Kabut argued that the golf cart owner breached the strata's bylaws.

18. The strata council dismissed Mr. Kabut's complaint. After a further hearing, the strata council maintained that there was no bylaw preventing the use of common property circuits to charge golf carts, and it would not take any further action.

Preliminary Issue

19. In his Dispute Notice, Mr. Kabut made a vague allegation about the golf cart owner being elected to the strata council in October 2023. Since Mr. Kabut submitted his Dispute Notice on April 4, 2023, I infer he means October 2022. Mr. Kabut says he considers the strata's decision in this dispute prejudicial to the strata and raises the issue of privilege.

20. I infer from Mr. Kabut's argument that he claims a strata council member is in a conflict of interest. The process for a council member to follow while in a conflict of interest is covered in SPA section 32. Mr. Kabut did not provide any evidence or submissions to support his allegation or explain what he meant by privilege. In any event, the remedies for breaching SPA section 32 are set out in SPA section 33.
21. CRTA section 122(1)(a) specifically excludes SPA section 33 from the CRT's jurisdiction. The BC Supreme Court has also found that the CRT has no authority to deal with the accountability of council members for actions taken while performing their duties (see *Williams v The Owners, Strata Plan NW 1340*, 2021 BCSC 2058 at para 66). CRTA section 10 says that I must refuse to resolve a claim that is outside the CRT's jurisdiction. So, I refuse to resolve Mr. Kabut's claim about a council member's alleged conflict of interest.

Did the Strata Act Significantly Unfairly by Not Enforcing its Bylaws?

22. I will first set out the relevant law. SPA section 26 requires the strata council to perform the duties of the strata, which includes enforcing bylaws. The strata must act reasonably in response to complaints about bylaw infractions.
23. Mr. Kabut says the strata did not enforce bylaws 4.1(a), 4.1(c) and 49 against the golf cart owner. Mr. Kabut also argues the strata did not apply its bylaws consistently to another owner charging their electric car. While Mr. Kabut does not refer to significant unfairness in his submissions, I find that this is the law that applies to his claims.
24. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). The court has the same authority under SPA section 164, and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113).
25. Several CRT decisions have concluded that it is significantly unfair for a strata to not enforce its bylaws (see *Wong v. The Owners, Strata Plan EPS4444*, 2022 BCCRT 737 at para 18). Other CRT decisions have found that it is significantly unfair for a

strata to inconsistently enforce its bylaws (see *N.S.S. v. The Owners, Strata Plan ABC XXXX*, 2019 BCCRT 696 at para 38).

26. I will address each of Mr. Kabut's claims below.

Enforcing Bylaws 4.1(a) and 4.1(c)

27. Bylaw 4.1(a) says an owner must not use common property in a way that causes a nuisance or a hazard to another person. Bylaw 4.1(c) says an owner must not use common property in a way that unreasonably interferes with the rights of other people to use and enjoy the common property.

28. Mr. Kabut argues that charging a golf cart is dangerous and could overload the strata's electrical circuit. Mr. Kabut did not provide any evidence that the golf cart owner's golf cart has caused any electrical overloads. The strata also argues that golf cart charging has never caused an overload. So, I infer Mr. Kabut argues that the potential risk for a future electrical overload is the issue. For the following reasons, I find Mr. Kabut has failed to prove that such a risk exists.

29. First, Mr. Kabut says a few years ago the strata lost 12 golf carts and their storage shed in a fire caused by an electrical malfunction. Mr. Kabut did not provide any evidence about the specifics of the fire. The strata argues it was unable to conclude what caused the fire.

30. Without any evidence to show what caused the shed fire, I find Mr. Kabut's argument is speculative. So, I find the shed fire does not support Mr. Kabut's claim that charging a golf cart in a parking area increases the risk of an electrical overload.

31. Second, Mr. Kabut provided the operating manual for a golf cart manufacturer – Club Car. Mr. Kabut says for optimal performance, the manual recommends a dedicated 15 or 20 amp separately protected single-phase circuit for charging a golf cart. The strata argues that this is only a recommendation and not a safety requirement.

32. I accept that the Club Car manual warns that an owner should use a dedicated 15 to 20 amp separately protected circuit. However, Mr. Kabut did not provide any evidence

showing the golf cart owner is using a Club Car golf cart. There is also no evidence before me about the common property's electrical circuit. So, I find the Club Car manual on its own does not prove that charging a golf cart from the common property electrical outlet increases the risk of an electrical overload.

33. Third, Mr. Kabut argues that the strata has not followed part 5.2 of the *Strata Property Regulation* (SPR). SPR part 5.2 requires the strata to obtain an electrical planning report for the strata from a qualified person by December 31, 2026. I infer Mr. Kabut argues without this report, the strata should not allow golf cart charging from common property outlets.
34. The strata provided evidence showing it has retained a qualified person to complete the report. I find SPR part 5.2 also does not prevent a strata from allowing electric vehicle charging while the report is being completed. Since the strata still has over two years to obtain a report, I find SPR part 5.2 does not help Mr. Kabut's argument.
35. Finally, and most importantly, I find the risk of a future electrical overload is subject matter outside ordinary knowledge. To prove a risk, I find Mr. Kabut needed to provide expert opinion evidence showing that charging the golf cart using the common property's electrical circuit increases the risk of an overload (see *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2015 BCSC 845 at para 22). Mr. Kabut did not provide this evidence.
36. Instead, Mr. Kabut provided the Condominium Home Owners Association of British Columbia (CHOA) bulletin 300-1035. This bulletin recommends that a strata should retain a certified electrician to review the strata's electrical system to ensure there are no risks to using single outlets for trickle charging. I find this evidence is not relevant to the current issue. The CHOA bulletin was in response to a strata where owners were charging their electric cars, not a golf cart. I find this evidence is also not expert opinion evidence, as the author is only giving general advice and does not claim to be an electrician.

37. To support his argument, Mr. Kabut also cites two earlier CRT cases, *Ulko v. The Owners, Strata Plan LMS4068*, 2022 BCCRT 148 and *Wong v. Section 1 of The Owners, Strata Plan VR 2540*, 2022 BCCRT 330. I find both cases are different from the present case and do not assist Mr. Kabut.
38. In *Ulko*, the strata had received an electrician's opinion that its parkade could not handle charging the owner's electric car. So, the strata did not allow the owner to do so. That is not the case here. There is no evidence before me that the strata's electrical circuit cannot handle charging the golf cart. So, I find *Ulko* does not support Mr. Kabut's argument.
39. In *Wong*, an owner argued that it was significantly unfair that the strata did not allow him to charge his electric car using a common property outlet. The strata had tried to pass a rule and bylaw to stop this. The tribunal member found the rule was not valid and there was no evidence that the bylaw was in effect. However, the tribunal member concluded that SPA section 3 gave the strata the authority to decide how the common property is used. I note SPA section 3 says the strata is responsible for managing and maintaining the common property for the benefit of the owners.
40. Here, the strata council used its authority under SPA section 3 to allow the golf cart owner to use the common property outlet. So, I find *Wong* does not support Mr. Kabut's argument.
41. In summary, based on the evidence before me, I find Mr. Kabut has not proven that the golf cart owner breached bylaws 4.1(a) and 4.1(c). So, I decline to order the strata to enforce these bylaws.

Enforcing Bylaw 49

42. Bylaw 49 was created in 2017 and covers installation of an individual charging station for an electric vehicle (EV). The bylaw was amended at the strata's October 24, 2023 AGM. In the amendment, the strata changed bylaw 49 and included several definitions. An EV is now defined as any vehicle that is capable of obtaining electricity from an external plug outlet, excluding, e-bikes, mobility scooters, and golf carts. So,

I find bylaw 49 does not apply to golf carts, and I decline to order that the strata enforce bylaw 49.3 against the golf cart owner.

43. Even if the strata had not amended its bylaws, I find Mr. Kabut has failed to prove the golf cart owner breached bylaw 49, as originally enacted. Bylaw 49.1 said an owner who has exclusive use of a parking stall may request written consent from the strata council to install EV charging equipment in their parking stall. Bylaw 49.3 said the power source for the charging equipment must be installed directly from the owner's electrical panel.
44. Mr. Kabut argues that a golf cart is an EV, so bylaw 49 applied to golf carts. Mr. Kabut further argues that bylaw 49.3 said a golf cart can only be charged from an owner's electrical panel. Since the golf cart owner did not do this, Mr. Kabut argues he breached bylaw 49.3.
45. Even if I accepted Mr. Kabut's argument that a golf cart is an EV, I disagree with how he interprets bylaw 49, as originally enacted. Bylaw 49.1 said an owner "may" apply to the strata to install EV charging equipment. The word "may" is permissive. This means the owner had the choice of whether to install EV charging equipment, or not. The bylaw did not require an owner to install EV charging equipment. Bylaw 49.3 specifically referred to the EV charging equipment in bylaw 49.1. So, I find the requirement to install charging equipment directly from an owner's electrical panel applied only to EV charging equipment an owner chose to install under bylaw 49.1.

Inconsistently Enforcing Bylaws

46. Mr. Kabut argues that the strata told another strata owner to stop charging their electric vehicle from a common property electrical outlet. I infer that Mr. Kabut argues that the strata is not applying its bylaws consistently, which can be significantly unfair.
47. Mr. Kabut provided strata council emails showing that previous strata council members relied on bylaw 49 to prevent owners from charging EVs using common property outlets. The strata admits there was past confusion about bylaw 49, which is why the strata amended its bylaw at the October 24, 2023 AGM.

48. The strata also argues that the electric vehicle Mr. Kabut refers to was an electric car, which when charging could cause a nuisance. The strata argues full-electric and plug-in hybrid vehicles draw considerably more power when charging than a golf cart. Mr. Kabut does not dispute this. The strata says this increased power draw raises the potential to trip the circuit breaker. In this case, the strata says the electric car was charging from an electrical outlet in a garage associated with the quad buildings. It claims charging in this building is a known issue, as it causes the circuit breaker to trip and the garage door to stop working.
49. I accept the strata's argument that charging an electric car using certain common property electrical outlets could be a nuisance if it trips the circuit breaker. Since I found Mr. Kabut has not proven that charging a golf cart poses a similar risk, I find the strata did not act significantly unfairly when enforcing its bylaws in this case.
50. In his reply submissions, Mr. Kabot also argues that the strata's December 2020 bylaw violation letter to the golf cart owner also required them to stop charging their golf cart from the common property. The bylaw violation letter is not in evidence. So, there is no evidence before me that this is true.
51. Mr. Kabut provided the December 16, 2020 strata council meeting minutes which notes that the strata received a complaint about a golf cart "storage/charging". The minutes note a bylaw violation letter will be sent. However, the minutes do not say which bylaw was violated.
52. After reviewing the bylaws, I find the strata was likely only referring to bylaw 38.13 about renting parking stalls in the apartment buildings. I say this for two reasons. First, there is no evidence before me that the strata took any further action after the golf cart owner rented a parking stall. Second, there is no bylaw that prevents owners from charging golf carts with common property electrical outlets. So, I find the strata did not act significantly unfairly when addressing the December 16, 2020 complaint.

Conclusions

53. In conclusion, I find Mr. Kabut has failed to prove the strata acted significantly unfairly when enforcing its bylaws. So, I dismiss Mr. Kabut's claim for a bylaw enforcement order.
54. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Kabut was unsuccessful, so I dismiss his claim for CRT fees. The strata did not claim any dispute-related expenses or pay any CRT fees.
55. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Mr. Kabut.

ORDER

56. I dismiss Mr. Kabut's claims and this dispute.

Jeffrey Drozdiak, Tribunal Member